BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CAROLYN K. MIMS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,041,767
AMERICAN INSULATED WIRE CORP.	)	
Respondent	)	
AND	)	
	)	
PHOENIX INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent appeals the February 25, 2009, preliminary hearing Order of Administrative Law Judge Thomas Klein (ALJ). Claimant was awarded authorized medical treatment after the ALJ found that she had suffered a fall which arose out of and in the course of her employment with respondent. The fall was determined to have resulted when claimant fainted from overheating, with links to dehydration. The medical bills provided by claimant at the preliminary hearing were ordered paid as authorized medical treatment. Temporary total disability compensation (TTD) was denied.

Claimant appeared by her attorney, Dennis L. Phelps of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, P. Kelly Donley of Wichita, Kansas.

This Appeals Board Member adopts the same stipulations as the ALJ, and has considered the same record as did the ALJ, consisting of the transcript of the Evidentiary Deposition of John Murray taken December 23, 2008; the transcript of Preliminary Hearing held February 24, 2009, with attachments; and the documents filed of record in this matter.

ISSUE

Did claimant satisfy her burden of proof that she suffered an accidental injury which arose out of and in the course of her employment with respondent? Respondent contends

the accident occurred as the result of a fainting spell not connected to, or caused by, claimant's work and not as the result of any work activity.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant began working for respondent in its warehouse in January 2008, doing inventory, stacking product and cycle counting.[1] This required that she work on a 2-foot by 5-foot platform while wearing a safety harness. The platform would rise to the top of the warehouse, a height of up to 35 feet. Claimant would stack wire reels on a pallet attached to the platform forklift.

On the date of accident, May 13, 2008, claimant was working on the platform high in the warehouse when she began feeling hot and dizzy. Claimant turned on a fan on the platform to try to cool herself off. When this failed, claimant lowered the platform to the floor. Claimant may have passed out while the platform was lowering, striking her forehead on something hard enough to raise a golf ball sized bruise on the left side of her forehead. There were no witnesses to this fall, but several of claimant's co-workers came to her aid shortly after the incident. Claimant described being hot and sweaty as she was being tended to by her co-workers and waiting for an ambulance.

Claimant was transported to the emergency room at Coffeyville Regional Medical Center by ambulance where she came under the care of Tim Belcher, M.D. Claimant underwent a series of tests to help determine the cause of the dizziness. A multitude of tests were run, all of which came back normal or negative. In the May 13, 2008, emergency room report summary, it was noted that claimant was light headed and hot. She was provided with instructions related to contusions, fainting and dehydration. Claimant had acknowledged that she had consumed very little liquid on the morning of the accident. Claimant was referred to Dawn McCaffery, ARNP. Ms. McCaffery recommended that claimant go to a family doctor and she aided claimant by assisting in contacting board certified internal medicine specialist Tiru M. Venkat, M.D. In an attempt to determine the cause of claimant's dizziness, claimant was again subjected to a series of tests, which again came back normal. Claimant had a history of blood clots in her legs, with deep vein thrombosis, but tests indicated no current evidence of the thrombosis. Dr. Venkat, in his letter of January 30, 2009, affirmed that the tests run on claimant were

[1] Murray Depo. at 13.

absolutely necessary because of the significant syncopal episode at work. He also opined that it was possible that the warm work environment contributed to the symptoms.[2]

Claimant was referred by her attorney to board certified physical medicine and rehabilitation specialist Michael H. Munhall, M.D., for an examination on August 25, 2008. Dr. Munhall reviewed a multitude of tests run on claimant and performed a physical evaluation. He diagnosed a head contusion from the syncope episode. He also determined that the treatment being provided by Dr. Venkat was appropriate and that claimant would be able to return to work upon completion of that treatment. He found a causal connection between claimant's diagnoses and the events and injury suffered on May 13, 2008. Dr. Munhall does not provide a definite opinion as to what caused the fainting or dizziness experienced by claimant on the date of accident.

Claimant's file and medical reports were provided to Cathy Brock, a claims adjuster for respondent's insurance company. Ms. Brock then referred the matter to Susan J. Jarrett, a nurse.[3] Ms. Brock and Ms. Jarrett determined claimant's injuries from the accident were not work related. A report from Ms. McCaffery dated May 15, 2008,[4] indicates that claimant needed to take heparin and Coumadin for blood clots. However, claimant testified that she has not needed the blood thinners for years. Additionally, the report indicates claimant also takes Benadryl for allergies. Claimant testified that she was not using Benadryl on the date of accident.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[5]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[6]

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[2] P.H. Trans., Cl. Ex. 9.

[3] P.H. Trans., Resp. Ex. 1.

[4] P.H. Trans., Resp. Ex. 2.

[5] K.S.A. 2007 Supp. 44-501 and K.S.A. 2007 Supp. 44-508(g).

[6] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[7]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[8]

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.[9]

Respondent argues the injuries suffered by claimant are the result of a personal condition and not work related.

In *Hensley*,[10] the Kansas Supreme Court categorized risks associated with work injuries into three categories: (1) those distinctly associated with the job; (2) risks which are personal to the worker; and (3) neutral risks which have no particular employment or personal character. This analysis is similar to the analysis set forth in 1 *Larson's Worker's Compensation Law*, § 7.04[1][a] (2006). The simplest explanation is that if an employee falls while walking down the sidewalk or across a level factory floor for no discernable reason, the injury would not have happened if the employee had not been engaged upon an employment errand at the time.

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[7] K.S.A. 2007 Supp. 44-501(a).

[8] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[9] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

[10] *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

Here, the injuries to claimant stemmed from a dizzy spell which caused claimant to possibly pass out and strike her head. The record indicates the cause of the dizziness was probably associated with either the heat in respondent's warehouse or dehydration, as claimant had worked for several hours and consumed very little liquid on the date of accident. The ALJ found claimant's accident did arise out of and in the course of her employment with respondent. This Board Member agrees with that finding. The award of benefits shall be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[11] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

Claimant has satisfied her burden of proof that she suffered an injury from an accident which arose out of and in the course of her employment with respondent. The award of benefits is affirmed.

DECISION

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Order of Administrative Law Judge Thomas Klein dated February 25, 2009, should be, and is hereby, affirmed.

IT IS SO ORDERED.

[11] K.S.A. 44-534a.

Dated this ____ day of May, 2009.

HONORABLE GARY M. KORTE

c: Dennis L. Phelps, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge